

EX PARTE OR LATE FILED

June 8, 1995

JUN - 8 1995

Pademacia - Adminationo commission OF JECKETARY

1722 Eye Street, N.W. Suite 300 Washington, D.C. 20006 (202) 736-8640

Fax: (202) 736-8740

OFFICERS

S. White Rhyne President

Henry M. Rivera President-Elect

Alexandra M. Wilson Secretary

James R. Hobson **Assistant Secretary**

Jean L. Kiddoo Treasurer

Patricia A. Mahoney Assistant Treasurer

EXECUTIVE COMMITTEE

Alan C. Campbell Diane J. Cornell Arthur B. Goodkind William K. Keane Harry C Martin Robert L. Pettit John C. Quale Lawrence Roberts Gregory M. Schmidt Richard S. Whitt James L. Winston

By Hand Delivery

Mr. William F. Caton Acting Secretary Federal Communications Commission 1919 M Street, Northwest Room 222 Washington, D.C. 20554

> In re: GC Docket No. 95-21, In the Matter of Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings; Memorandum of Oral Ex Parte Presentation

Dear Mr. Caton:

The Federal Communications Bar Association, by its undersigned representative and in accordance with 47 C.F.R. § 1.1206(a)(2) (1994), hereby respectfully submits for inclusion in the record of the above-referenced proceeding an original and one copy of a memorandum summarizing an oral ex parte presentation made to Commissioner Rachelle B. Chong and her Senior Legal Advisor in the subject proceeding on this date.

Any questions concerning this matter may be directed to the undersigned.

Very truly yours,

DELEGATE TO AMERICAN BAR ASSOCIATION

Richard R. Zaragoza

EXECUTIVE DIRECTOR

Paula G. Friedman

John Griffith Johnson, Jr.

Chair, Ex Parte Rules Committee

Federal Communications Bar Association

c/o Bryan Cave

700 Thirteenth Street, Northwest

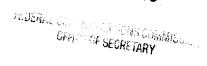
Suite 700

Washington, D.C. 20005-3960 Telephone: (202) 508-6146

Telecopier: (202) 508-6200

No. of Copies rec'd DALABOOE

Mr. William F. Caton June 8, 1995 Page 2 JUN - 8 1995



Enclosure (x 2)

cc: Hon. Rachelle B. Chong, with enclosure (by hand delivery)

Jane E. Mago, Esq., with enclosure (by hand delivery)

William E. Kennard, Esq., with enclosure (by hand delivery)

David S. Senzel, Esq., with enclosure (by hand delivery)

Memorandum of Oral Ex Parte Presentation in GC Docket No. 95-21

June 8, 1995

Present:

The Honorable Rachelle B. Chong, Member, Federal Communications Commission Jane E. Mago, Esq., Senior Legal Advisor to Commissioner Chong

S. White Rhyne, Esq., President, Federal Communications Bar Association Arthur B. Goodkind, Esq., Member, FCBA Executive Committee John Griffith Johnson, Jr., Esq., Chair, FCBA Ex Parte Rules Committee

SUMMARY OF PRESENTATION

The FCBA opposes the Commission's proposal to extend to adjudicatory and quasi-adjudicatory proceedings the so-called "permit-but-disclose" procedures for making ex parte presentations to Commission decision-making personnel.

• Near Unanimity of FCBA Members' Opposition to the FCC's Proposal:

Notwithstanding the diversity of FCBA members' backgrounds, practice areas, and law-firm settings, virtually every member who made his or her views known to us on this subject opposed the FCC's proposal.

• Perception of the Fairness of the FCC's Decision-Making:

In adjudicatory matters, it is unheard of for a tribunal to entertain <u>ex parte</u> presentations in contested cases, except in extraordinary situations.

Perceptions of inequality of access to FCC decision-making personnel among different constituents of the regulated industries and their representatives.

An historical perspective -- remembering the 1950's and early 1960's.

• Efficiency in the Dispatch of the FCC's Business:

Litigants' strategies, and not the rules governing authorized pleading cycles, will determine the number and the timing of merits-oriented submissions.

Expansion of the record by virtue of the inclusion of post-pleading-cycle written <u>ex parte</u> presentations and memoranda of oral <u>ex parte</u> presentations.

Increased demands upon the time of FCC decision-makers to respond to requests for meetings from interested parties, to meet with such parties, and to ensure that the permit-but-disclose rules are followed.

Burdening cases with collateral disputes over adveraries' compliance with permit-but-disclose rules (e.g., the adequacy of the disclosure in memoranda of oral presentations, timing of the submission of such memoranda, regularity of the filing of copies of memoranda in the record by the FCC's clerical staff).